

The Honorable Marc Barreca  
Hearing Date: January 4, 2019 at  
9:30 a.m.  
Response Date: December 28, 2018

IN THE UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

In re

Christine Tavares,  
Debtor.

Bankruptcy Case No. 16-14901-MLB

Christine Tavares,  
Plaintiff,

Adversary Case No. 18-01002-MLB

-vs.-

Alabama Housing Finance Authority, a foreign  
public corporation doing business in  
Washington as ServiSolutions,  
Defendant.

**AMENDED MOTION TO DISSOLVE  
INJUNCTION AND FOR  
DISBURSEMENT OF FUNDS ON  
DEPOSIT WITH THE CLERK OF  
COURT**

Defendant Alabama Housing Finance Authority (“Defendant” or “AHFA”), pursuant to Rule 65, Fed. R. Civ. P, respectfully requests that this Honorable Court enter an Order addressing the dissolution of the temporary injunction order and for the distribution of the funds on deposit with the Clerk of Court to AHFA. This amended motion provides information (see ¶ 6) regarding the sum initially deposited with the Clerk as well as the current principal balance as of December 18, 2018. In support of the requested relief, the Defendant submits the following:

**The Court’s Order Dismissing the Plaintiff’s Complaint *Ipso Facto* Dissolved the Temporary Restraining Order**

1. Before the referral of the action to this Court for all pre-trial proceedings (Doc. 1),

1 the Honorable Marsha J. Pechman, United States District Judge, issued an Order (Doc. 19) in  
2 Case No. 2:17-cv-01599-MJP (United States District Court for the Western District of  
3 Washington at Seattle) granting Plaintiff Christine Tavares' motion requesting the entry of  
4 injunctive relief halting the non-judicial sale of the home that serves as security for the mortgage  
5 loan.

6         2.         A preliminary injunction imposed according to the procedures outlined in Federal  
7 Rule of Civil Procedure 65 dissolves *ipso facto* when a final judgment is entered in the cause.  
8 *U.S. Philips Corp. v. KBC Bank N.V.*, 590 F.3d 1091, 1094 (9<sup>th</sup> Cir. 2010) (citing *Sweeney v.*  
9 *Hanley*, 126 F. 97, 99 (9th Cir.1903); *United States ex rel. Bergen v. Lawrence*, 848 F.2d 1502,  
10 1512 (10th Cir.1988) (“With the entry of the final judgment, the life of the preliminary injunction  
11 came to an end, and it no longer had a binding effect on any one. The preliminary injunction was  
12 by its very nature interlocutory, tentative and impermanent.”); *Fundicao Tupy S.A. v. United*  
13 *States*, 841 F.2d 1101, 1103 (Fed.Cir.1988) (“[A]lthough a preliminary injunction is usually not  
14 subject to a fixed time limitation, it is *ipso facto* dissolved by a dismissal of the complaint or the  
15 entry of a final decree in the cause.”) (internal quotation marks omitted); *Cypress Barn, Inc. v. W.*  
16 *Elec. Co.*, 812 F.2d 1363, 1364 (11th Cir.1987); 11A Charles Alan Wright, Arthur R. Miller &  
17 Mary K. Kane, *Federal Practice and Procedure* § 2947 (2005)). This principle stems from the  
18 very purpose of a preliminary injunction, which is to preserve the status quo and the rights of the  
19 parties until a final judgment issues in the cause. *See Univ. of Tex. v. Camenisch*, 451 U.S. 390,  
20 395, 101 S.Ct. 1830, 68 L.Ed.2d 175 (1981) (“The purpose of a preliminary injunction is merely  
21 to preserve the relative positions of the parties until a trial on the merits can be held.”); *Sierra*  
22 *On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir.1984) (“A preliminary  
23 injunction ... is not a preliminary adjudication on the merits but rather a device for preserving the  
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1 status quo and preventing the irreparable loss of rights before judgment.”).

2 3. Consistent with the principles above, in *Schubert v. Bank of New York Mellon*, 2017  
3 WL 4685707, at \*1 (N.D. Calif. July 18, 2017), the plaintiff secured a temporary restraining order  
4 enjoining a trustee’s scheduled property sale. Thereafter, the defendants moved to dismiss the  
5 action, which the court granted but gave plaintiff leave to file an amended complaint to add claims  
6 based on an alleged breach of a settlement agreement. *Id.* After the plaintiff filed his notice of  
7 intention not to file an amended complaint, the court dismissed the plaintiff’s claims with  
8 prejudice. *Id.* Finally, with no existing claims to support the temporary restraining order, the  
9 court contemporaneously dissolved the temporary restraining order. *Id.* Based on these well-  
10 established legal principles, with the entry of the Court’s November 7, 2018 Order (Doc. 83), the  
11 temporary restraining order came to an end. As a result, the Defendant requests that the Court  
12 enter an Order confirming the dissolution of the temporary restraining order.  
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15 **As a Corollary, the Funds on Deposit with the Clerk of Court are due to be**  
16 **Disbursed to AHFA**

17 4. As a condition of the entry of the temporary restraining order, the Court’s Order  
18 required the Plaintiff to pay the Clerk of Court the amount of \$2,302.66 each month until  
19 resolution of the action on the merits. *See* Order (Doc. 19), Case No. 2:17-cv-01599-MP (United  
20 States District Court for the Western District of Washington at Seattle). In doing so, the Court  
21 specifically noted that, under the Deed of Trust Act (“DTA”), it may restrain a foreclosure sale  
22 only if the plaintiff periodically pays the Clerk of Court the amount due under the mortgage loan  
23 were the property not being foreclosed on. *Id.*  
24

25 5. The DTA specifically provides, in pertinent part, “[t]he court shall require as a  
26 condition of granting the restraining order or injunction that the applicant pay to the clerk of the

1 court the sums that would be due on the obligation secured by the deed of trust if the deed of trust  
2 was not being foreclosed.” RCW 61.24.130(1). *See also Tandiana v. NovaStar Mortg., Inc.*,  
3 2005 WL 2206890, at \*3 (W.D.Wash.2005) (requiring monthly payments to the court registry  
4 under RCW 61.24.130 “because enjoining the foreclosure deprives [the lender] from recovering  
5 nearly two years of unpaid principal and interest. Although the court is sympathetic to the  
6 [borrowers’] financial plight and the alleged violations that occurred, the [borrowers] cannot  
7 remain in their home without making their mortgage payments.”)

8  
9 6. The principal sum initially deposited with the Clerk was \$2,302.66. The current  
10 amount (as of December 18, 2018) of principal to be disbursed to AHFA is \$29,934.58.<sup>1</sup> With  
11 the resolution of the Plaintiff’s claims, the funds deposited by the Plaintiff with the Clerk of Court  
12 in lieu of making the monthly mortgage payment directly to AHFA are due to be distributed to  
13 AHFA.

14  
15 WHEREFORE, PREMISES CONSIDERED, the Defendant respectfully requests that this  
16 Honorable Court enter an Order addressing the dissolution of the temporary restraining order and  
17 directing the Clerk of Court, U. S. District Court for the Western District of Washington (Seattle),  
18 to disburse the funds on deposit to the Defendant. In addition, the Defendant seeks such other and  
19 further relief as the Court deems appropriate under the circumstances.

20  
21 Respectfully submitted this the 18<sup>th</sup> day of December, 2018.

22  
23 /s/ Stephen J. Bumgarner

24 Stephen J. Bumgarner

25 *Pro Hac Vice*

26 Bar No. 2089M66S

Maynard Cooper & Gale, P.C.

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<sup>1</sup> Per LCR 1(c), Local Rules W.D. Wash., the term “Judge” refers to a United States District Judge, a United States Bankruptcy Judge, or United States Magistrate Judge and the term “Court” refers to the United States District Court for the Western District of Washington and to a Judge, Clerk, or deputy clerk acting on behalf of the Court.

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MOTION TO DISSOLVE INJUNCTION AND FOR DISBURSEMENT OF FUNDS ON  
DEPOSIT WITH THE CLERK OF COURT

Adversary Case No. 18-01002-MLB

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 18<sup>th</sup> day of December, 2018, I filed the foregoing Defendant Alabama Housing Finance Authority's MOTION TO DISSOLVE INJUNCTION AND FOR DISBURSEMENT OF FUNDS ON DEPOSIT WITH THE CLERK OF COURT with the Clerk of the Court using the CM/ECF system and served it upon Plaintiff's counsel as follows:

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*/s/ Stephen J. Bumgarner*  
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